

LOWER COLORADO RIVER
MULTI-SPECIES CONSERVATION PROGRAM
PUBLIC HEARING
PHOENIX, ARIZONA
JULY 22, 2004

	H.E.O. REPORTING, INC.
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1 A P P E A R A N C E S

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3 Joseph Vanderhorst, Hearing Officer

4 Christopher S. Harris

5 Patti Aaron

6 William E. Werner

7 Perri Benemens

8 Tom Buschatzke

9 Robert S. Lynch

10 Carol Young

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1 MR. JOSEPH VANDERHORST: Good evening. Welcome
2 to the public hearing on the Local Colorado River
3 Multi-species Conservation Program. The program is a
4 combined federal, state and local effort to provide
5 compliance with the Endangered Species Act for operations
6 related to the Lower Colorado River, and it includes
7 agencies, the Federal government, state agencies and local
8 agencies from the states of Nevada, Arizona and
9 California.

10 My name is Joseph Vanderhorst. I am with the
11 Metropolitan Water District of Southern California, and I
12 am here on behalf of Metropolitan as the lead agency for
13 compliance for the California Environmental Quality Act,
14 which requires environmental review with projects
15 undertaken by California agencies, and Metropolitan is one
16 of the California agencies that is participating in the
17 development and implementation of the Habitat Conservation
18 Plan that is part of the Multi-species Conservation
19 Program.

20 Also involved in the development of the
21 environmental review documents, which is the purpose of
22 our meeting here tonight, is the United States Fish and
23 Wildlife Service. They are the joint lead agency for
24 compliance with the National Environmental Policy Act, and
25 their action for which they are performing an

1 environmental review. Under that act is the issuance of
2 incidental take permits for the Habitat Conservation Plan.

3 Also co-lead agency from the Federal government
4 is U.S. Bureau of Reclamation. The Bureau is not only
5 helping in the development of the Multi-species
6 Conservation Program, but will also be the implementing
7 agency when and if the program is approved.

8 The purpose of today's meeting is to accept
9 public comments on the environmental documents that are
10 out for public review at this time. We have a draft
11 Environmental Impact Statement, Environmental Impact
12 Report that is a joint document issued pursuant to the
13 California Environmental Quality Act and the National
14 Environmental Policy Act, and we're here tonight to
15 receive comments from the public on that document. It is
16 also supported by the Habitat Conservation Plan and the
17 Biological Assessment issued by the Bureau of Reclamation.

18 The process that we're going to follow tonight is
19 to begin with a presentation giving a general outline of
20 the program, and Mr. Chris Harris of the Colorado River
21 Board of California will be making that presentation. At
22 the end of that, then we will open the floor up for public
23 comments.

24 You have the opportunity tonight to give us
25 verbal comments and those will be taken down by a

1 shorthand reporter so they can be considered in finalizing
2 the environmental review documents, but you also have the
3 opportunity to provide written comments and the -- there
4 is a form on the table at the back of the room which can
5 be used for that purpose. You can leave that form with us
6 tonight. And in the alternative, you can prepare
7 separate written comments and mail those in, and the
8 address is also on the back table for anyone who wants to
9 submit written comments.

10 We would ask that everyone who is here tonight
11 please sign in on the sign-up sheet so that we have a
12 record of your attendance, and when you do make your
13 comments, if you will begin by stating your name and
14 spelling it for the shorthand reporter and giving us your
15 address, and then we would ask that you speak slowly and
16 clearly so that we get the testimony down correctly, and
17 we would also impose a five-minute limit on everyone who
18 is providing public comments tonight so that we can get
19 through the many comments we have in the short time
20 allowed.

21 If you do have additional comments that you can't
22 submit in the five minutes, we encourage you to submit
23 those additional comments in writing.

24 Without further ado, Mr. Harris, will you provide
25 your presentation?

1 (Mr. Harris' presentation was not taken down by the
2 Court Reporter.)

3 MR. JOSEPH VANDERHORST: With that we will open
4 the public hearing for comment at this time, and so you
5 may either rise at your chair or we do have a microphone
6 in the middle aisle there. Feel free to step up and
7 provide comments.

8 MR. WERNER: Thank you, Mr. Vanderhorst. I have
9 a statement I am going to repeat. While I presented it
10 last night, I will present it again.

11 MR. JOSEPH VANDERHORST: Would you mind stating
12 your name and spelling it for the record, please.

13 MR. WERNER: William E. Werner, W E R N E R,
14 representing the State of Arizona Department of Water
15 Resources, 500 North 3rd Street, Phoenix, Arizona.

16 The Arizona Department of Water Resources has
17 been involved in development of the Lower Colorado River
18 Multi-species Conservation Program since 1994 when the
19 department joined with sister agencies in California and
20 Nevada in funding a feasibility assessment of options for
21 proactively dealing with endangered species management
22 issues related to Colorado River operation and
23 maintenance. Following the feasibility study the group
24 initiated an effort to develop and implement a feasible
25 Multi-species Conservation Program management program.

1 There is three bullets here:

2 Accommodates current water diversions and power
3 production and optimizes future water and power
4 development opportunities.

5 Second, works towards the conservation of habitat
6 and toward recovery of the species.

7 Three, reduces the likelihood of additional
8 threatened and endangered species listing.

9 Today we have before us the Lower Colorado River
10 Multi-species Conservation Program Draft Programmatic
11 Environmental Impact Statement and Environmental Impact
12 Report and associated documents that describe such a
13 program and the effects of implementation of the program.

14 The Colorado River is clearly an important asset
15 to the State of Arizona, and many of the State's citizens
16 benefit from water, power and recreational resources of
17 the river. Within the State the director of the
18 Department of Water Resources is authorized for and on
19 behalf of the State of Arizona to consult, advise and
20 cooperate with the Secretary of the Interior of the United
21 States in respect to the exercise of the authority of the
22 Secretary of the Interior of any authority relative to the
23 water of the Colorado River.

24 The Department believes that implementation of
25 conservation measures as described in Alternative 1 and

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1 issuance of a Section 10 (a) (1) (b) permit to the
2 non-federal applicants meets the objectives identified
3 previously. A coordinated, comprehensive, habitat and
4 species conservation strategy best meets those objectives
5 over the long-term, thus maintaining current water
6 diversions and power production and future water and power
7 development opportunities.

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8 In addition, Alternative 4 focusing on off river
9 habitat conservation measures merits careful
10 consideration. Conservation areas described in
11 Alternative 4 could be used in conjunction with on river
12 areas described in Alternative 1 resulting in blend of the
13 two.

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14 In summary, the Arizona Department of Water
15 Resources supports implementation of a proactive
16 coordinated comprehensive habitat and species conservation
17 strategy as described in the draft EIS. The Department
18 looks forward to a continuing positive relationship with
19 all sister states, agencies, political subdivisions,
20 federal agencies, Indian tribes, environmental groups, and
21 other interested parties as this program develops. Thank
22 you.

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23 MR. JOSEPH VANDERHORST: Thank you, Mr. Werner.

24 Any other public comments at this time?

25 MR. LYNCH: I guess I am in -- I am it

1 Robert S. Lynch, Robert S. Lynch and Associates, 340 East
2 Palm Lane, Suite 140, Phoenix, Arizona, 85004. I
3 obviously am an attorney. Several of the things about
4 this -- I think to start with in terms of the scope of the
5 exercise, I am concerned with reaches one and seven, reach
6 seven being the area below Morelos Dam. We have a Ninth
7 Circuit opinion that says that the Bureau of Reclamation
8 has no discretion with regard to the operation of Lake
9 Mead in terms of conserving water as a result of a dispute
10 over the forest area in the marsh area at the upper end of
11 the lake and an endangered bird. If that is true, and
12 there is no discretion in the operating of the lake, then
13 there is no jurisdiction under the Endangered Species Act.

14 We have a District Court decision from the
15 District of Columbia saying that the Bureau of Reclamation
16 has no discretion in terms of releasing water to satisfy
17 the Mexican Water Treaty. If that is true, then there is
18 no jurisdiction in the Endangered Species Act below
19 Morelos because the actions of the Bureau are
20 nondiscretionary. In those two instances there is nobody
21 else to blame because the operations are totally
22 controlled by the federal agency, and any possible
23 participation by a nonfederal interest has nothing to do
24 with their actions. So I believe that the alternative in
25 the EIS is an improperly large area, which means maybe if

1 you're going to spend \$610 million you might be able to
2 expend it more effectively on the shorter area of the
3 river.

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4 There is also no Section 10 (a) (1) (a) voluntary
5 permit as part of any of these alternatives. It is
6 clearly authorized under these circumstances and could be
7 and should be considered as part of the scheme for
8 developing the program. I don't believe that it would be
9 particularly difficult to modify Alternative 1 to include
10 possibility of a 10 (a) (1) (a) permit, and I don't
11 believe that the analysis -- environmental analysis of
12 what will be done -- will be changed at all. It's the
13 matter of which type of permit for the Fish and Wildlife
14 Service to issue.

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15 There really isn't a no action alternative for
16 this EIS. I know the law says that you're supposed to
17 have one. I know what the law says, but the alternative
18 is for Reclamation to initiate reconsultation under
19 Section 7. The true no action alternative is for somebody
20 who gets sued under Section 9 go to jail. I don't think
21 it's realistic to put that in an Environmental Impact
22 Statement, and I doubt you'd get any volunteers, but there
23 it is. The no action alternative described here is that
24 the Bureau of Reclamation enter into a Lower Colorado
25 River Multi-Species Conservation Program Programmatic

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1 consultation with the Fish and Wildlife Service in
2 anticipation of updating the current biological opinion.

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3 I also am not sure where we are at all on this.
4 There was a meeting here in Phoenix last week, which I
5 unfortunately was not able to attend but my associate was,
6 and it was reported to me by him and several other sources
7 that the federal agency notified Arizona and that the
8 current offer to the Federal government of a 10-year
9 program followed by a 50-year program was going to be
10 rejected. Now, if that's true, what does that do to
11 Alternative 1? If in fact the Fish and Wildlife Service
12 is going to tell the nonfederal sponsors that the offer,
13 if you will, on the table is unacceptable, what does that
14 do to the 10 (a) (1) (b) application before the Secretary
15 and the Director of the Fish and Wildlife Service? I
16 don't know the answer to that, but it certainly seems to
17 add a complicating factor to this whole process that needs
18 to be evaluated.

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19 There is also another complicating factor that
20 was discussed briefly at this meeting last Thursday.
21 Apparently the Attorney General of Arizona is interested
22 in examining title to lands on the Arizona side of the
23 Colorado River with regard to whether there are additional
24 lands that could be claimed by the State under the Equal
25 Footing Doctrine. This was news to me, but if that is

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1 true, then the process of identifying and acquiring lands
2 or permission to use lands for environmental mitigation
3 could be impacted by that activity, and that process needs
4 to be evaluated as well. So I think you've got some work
5 to do on redefining Alternative 1. Whether that might
6 require under the law that you renote the draft EIS,
7 whether there is significant change or not, I am not
8 prepared to say. It may or may not. Certainly by adding
9 a voluntary permit as a possible tool, I don't see how
10 that could, but some of these other things may end up
11 giving you more problems in terms of their environmental
12 significance.

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13 In any event, those are my oral comments, and I
14 will submit written comments by the 18th day. Thank you.

15 MR. JOSEPH VANDERHORST: Thank you, Mr. Lynch.
16 Are there any other public comments?

17 MR. BUSCHATZKE: Paul Buschatzke, B U S C H -
18 A T Z K E. I am the water advisor for the City of
19 Phoenix. I wanted to applaud the MSCP program. I think
20 you've put together a robust comprehensive program. I
21 also think that you've opened up the door to a really good
22 process by combining Section 7 and 10 with the Bureau. I
23 think that will be a wave of the future for all of us to
24 take advantage of, and we support the preferred
25 alternative. Thanks.

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1 MR. JOSEPH VANDERHORST: Thank you,

2 Mr. Buschatzke.

3 Are there any other public comments?

4 I want to thank you all very much for attending.

5 We appreciate your interest in our program, and from here

6 we will take the public comments that have been submitted

7 along with written public comments, and we will be

8 reviewing and revising the documents in accordance with

9 our consideration of those comments. Thank you, and good
10 evening.

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12 (Whereupon, the public hearing ended at 7:00 o'clock p.m.)

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